IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE
AND
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL No.1372 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 02-08-2004 in W.P.No.4158 OF 2004 on the file of the High Court.)

Between:
M/s.Eureka Estates Pvt.Ltd., G-1, "Eureka Court", Ameerpet, Hyderabad rep., by its Managing Director, K.Tulasi Ram, S/o.K.Musalaiah, R/o.Hyderabad.

.....
APPELLANT

AND

1 A.Mutyabai, W/o. A.S.Rao,
R/o. D.No.8-3-966/22, Nagarjunanagar, Ameerpet, Hyderabad.
2 A.Ashok Kumar, s/o A.S.Rao,
R/o D.No.8-3-966/22, Nagarjunanagar, Ameerpet, Hyderabad.
3 Commissioner, Municipal Corporation of Hyderabad,
Near Tank Bund, Hyderabad.

.....RESPONDENTS.

Counsel for the Appellant: Mr.V.VENKATARAMANA

Counsel for Respondents 1 and 2: Mr.K.SHANKARAIAH

Counsel for Respondent No.3: Mrs.G.JYOTHI KIRAN, S.C.FOR MCH.

The Court made the following :

ORAL JUDGMENT: (per the Hon'ble the Chief Justice)

Second respondent in the writ petition is the appellant herein and it is aggrieved by the order passed by the learned single Judge disposing of the writ petition filed by respondents 1 and 2 herein.

Respondents 1 and 2 alleged to be the purchasers of flats in fourth floor of the complex "Eureka Court" in Ameerpet, Hyderabad filed the writ petition to declare the action of the Municipal Corporation of Hyderabad in not taking steps pursuant to notice in B.R.S.N9o.1084/BRS/HO/98, dated 29-6-2000 issued to the appellant to remove the unauthorized construction of sixth floor, as illegal and arbitrary, and for a direction to the Municipal Corporation to consider the application dated 28-8-1998 submitted by the appellant in Form Nos.A and B under the Building Regulation Scheme for regularization of flat Nos.C9, C10, C11 and C12 allotted to them in fourth floor, and also for a direction to the Municipal Corporation to remove the unauthorized construction in sixth floor of the complex.

Learned single Judge took note of the stand of the Chief City Planner in the counter affidavit filed on behalf of the Municipal Corporation of Hyderabad that though the application of the appellant for regularization of unauthorized construction in Eureka Court was rejected on 29-6-2000, but further action for demolition

of sixth floor and other unauthorized constructions could not be made in view of the orders of the Court of the IV Junior Civil Judge, City Civil Court, Hyderabad, in I.A.No.1538 of 1997 in O.S.No.4739 of 1997. Insofar as the writ petitioners are concerned, learned single Judge observed that they were justified in approaching this Court to compel the Municipal Corporation of Hyderabad to discharge its statutory duty and while discharging its duties, it is necessary to give effect to the Court orders. Taking note of this, learned single Judge observed that though the civil Court passed orders in 1997, no application for vacating the interim order was moved, and, therefore, a direction was given to the Municipal Corporation to move the civil Court immediately and to bring to the notice of the Court about the orders dated 29-6-2000 passed by it and the judgment of this Court in **Advocate General v. State of A.P.** [1]. It was further observed that as and when such application is filed, it shall be open to the IV Junior Civil Judge to pass appropriate orders on the interlocutory application or to dispose of the suit within a period of four weeks from the date of receipt of a copy of the order. As far as this part of the direction is concerned, there is no grievance by the learned counsel for the appellant. His grievance is as regards the further direction made by the learned single Judge that Municipal Corporation shall take necessary action as per the decision of the B.R.S. Disposal Committee, whose decision was communicated in proceedings B.R.S.No.1084/BRS/HO/98, dated 29-6-2000 and in case the application made by the petitioners is still pending, it may be considered by the Corporation in accordance with law.

We have heard the learned counsel for the appellant and the learned Standing Counsel for MCH. Nobody appeared for the writ

petitioners, even though the matter was passed over.

We are of the view that once the learned single Judge has taken the view that as and when the suit is disposed of, the Municipal Corporation shall take necessary action as per the decision of the B.R.S. Disposal Committee and if any application is pending for regularization, it may be considered by the Corporation in accordance with law, there is no manner of doubt that irrespective of pendency of the suit, the Municipal Corporation may consider the application of the appellant and appropriate orders may be passed. Even if the decision of the civil Court may be against the appellant, nothing prevents the Municipal Corporation to consider the application of the appellant in accordance with law and to pass orders in view of the further guidelines issued by the Corporation under Building Regularisation Scheme and till such time the Municipal Corporation shall not proceed to demolish the construction made by the appellant. This is the reasonable view which has to be taken of the case and we proceed to dispose of the appeal and modify the order of the learned single Judge to the extent aforementioned. No costs.

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(DEVINDER GUPTA, C.J.)

20th September 2004.

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(B.SESHASAYANA REDDY, J.)

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To

1.The Commissioner, Municipal Corporation of Hyderabad,

Near Tank Bund, Hyderabad.
2.Two C.D. copies.

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[1] **2004 (1) ALD 708**